

Testimony before the House Committee on Agriculture Hearing
“Review of the Potential Impact of Recent Temporary Guest Worker Proposals on the
Agriculture Sector”

James R. Edwards, Jr. on behalf of NumbersUSA

January 28, 2004

Mr. Chairman and members of the committee, thank you for inviting me to provide testimony on the subject of agricultural guestworker proposals.

I represent NumbersUSA, a nonpartisan, nonprofit immigration reform organization that is pro-immigrant, pro-American worker, pro-liberty, and pro-environment. NumbersUSA has thousands of grassroots members from all walks of life, all political parties and persuasions, and all parts of our great nation. NumbersUSA is concerned about the overall levels of immigration – the numbers – and the adverse effects of sustained mass immigration on the United States – the consequences for low-skilled Americans, recent legal immigrants, our communities, and self-government.

Amnesties Pose Problems

NumbersUSA has grave reservations about the proposed guestworker programs. Sadly, most are fig leaves for mass amnesty. In general, they try to put guestworker lipstick on the amnesty pig. That’s because poll after poll shows the American public strongly in opposition to amnesty, the legalization of aliens who have broken our laws at least once and in one way, and more likely than not have broken several laws, such as unlawful entry, unlawful employment, identification document fraud, immigration benefits fraud, and the like. An ABC News poll earlier this month found 52 percent of Americans opposed to amnesty for Mexican illegal aliens and 57 percent opposed to amnesty for any other illegal aliens.

Specifically, the McCain-Kolbe bill (H.R. 2899/S. 1461), the Cornyn bill (S. 1387), the AGJOBS bill (H.R. 3142/S. 1645), and the president’s proposal all are amnesties. They each would reward illegal aliens with immediate legal status and the right to bring nuclear family members to join them. All would potentially grant the right to stay here permanently, to naturalize as U.S. citizens, and to sponsor distant relatives – creating more of the phenomenon known as “chain migration.” Two other guestworker bills do not contain amnesties: Chairman Goodlatte’s H.R. 3604, which would seek to improve the agricultural worker H-2A program, and H.R. 3534 by Rep. Tancredo.

Amnesties of any portion of the 8 to 12 million illegal aliens residing in this country would slap legal immigrants, who played by the rules, right across the face. It would overload the bureaucracy’s ability to administer the mass legalization. This would encourage the kinds of political pressures to hurry through, speed up, and risk missing criminal aliens, such as in the Citizenship USA scandal of the mid-1990s or the 1986 IRCA amnesty whereby a New York cab driver named Mahmud Abouhalima received amnesty as an agricultural worker and used his new-found legal status to travel to Afghanistan to receive terrorist training and to participate in the first World Trade Center bombing.

The very definition of guestworker argues against amnesty – “guestworker” means a temporary entrant who understands his entry to be a temporary one to perform a specific job. Even if a guestworker contemplates returning year after year, it is always

with the expectation of returning home for periods long enough to maintain community and familial ties in the home country.

In short, amnesties of illegal aliens have been shown by experience not to end illegal immigration, but to spark more illegal immigration. They extend the backlog of legal immigrants, amnesty recipients, and other immigration benefits – currently 6.2 million (according to Department of Homeland Security) – by literally millions.

Skepticism Toward Guestworker Programs

In general, we are skeptical of claims of the need for foreign guestworkers. Most so-called “guestworker” nonimmigrant visa programs in practice amount to a short-cut into the United States and an alternative route to permanent residence here. Further, access to foreign workers can potentially serve to distort the labor market. If the process fails adequately to safeguard Americans who might otherwise enter those fields, then the mere availability of a low-skilled, foreign labor pool that is more than willing to undercut what might otherwise be the market-set wage could create a self-fulfilling prophecy. Is certain work actually “jobs Americans won’t do,” as the conventional wisdom says, or is a government subsidy in the form of foreign labor for certain employers artificially holding down wages to the point that most Americans can’t afford to compete head to head with unskilled foreign workers, for whom the proffered wages are relatively better than those available in the home country but terribly below what a free domestic market would otherwise establish?

Besides market distortion itself, there is also the danger that guestworker programs unfairly advantage some employers, those who use the program to obtain cheaper laborers, over employers in that sector who do not participate in the program. Many of the Washington-based voices of various business sectors claim they can’t get by without foreign workers. However, the voice of America’s small business, the National Federation of Independent Business, has found differently as it surveys its members on a range of issues. NFIB members have opposed “temporary guest worker programs to ease worker shortages” by 3-to-1 and they even more strongly oppose amnesties of illegal aliens. A New York small business owner in the furniture industry exemplified these majority business opinions when he testified a couple of years ago at a joint hearing of Ways and Means and Judiciary subcommittees. He talked about how his business is harmed by competitors who hire illegal aliens. The same principle applies with respect to those businesses that don’t use a guestworker program and those that receive a government subsidy by way of guestworkers.

And, of course, there is the problem of unscrupulous employers hiring illegal aliens under the table. This certainly gives an unfair competitive advantage to willing lawbreaker employers and willing lawbreaker laborers as against the law-abiding employer and worker. The missing component here is the lack of employer sanctions enforcement. And corollary to that is the lack of meaningful employment verification of a hire’s eligibility to work in this country.

The signal being sent through all this public discussion of a guestworker-amnesty is that illegal immigration pays. In the seven previous amnesties, each one has resulted in the stimulation of more illegal immigration. The 1986 IRCA amnesty was supposed to be a one-time thing accompanied by employer sanctions to ensure a legal workforce by demagnetizing the “jobs magnet.” But that amnesty led to replenishment and tripling of

the illegal alien population in little more than a decade as successive administrations declined to enforce the employment enforcement component of the 1986 law.

Therefore, our concern with all the current amnesty-guestworker proposals is that they reward lawbreaking, they further distort the labor market, they do not adequately protect employers who do not participate in the guestworker program against unfair competitive advantage, they do nothing on the enforcement side, they encourage further lawbreaking by both employers and employees, they do nothing to end the parallel illegal alien employment track, and they perpetuate the same problems that have got us into this mess to begin with – only some of the new proposals, such as AGJOBS and the administration plan, set up a couple of hoops that stretch out the illegal alien's achieving the end goal of legalization and permanent stay.

Before any further steps are taken toward guestworkers and certainly before any amnesty, two things are vital. First, meaningful enforcement of our immigration laws must occur. Second, technology must be deployed and its usage required to ensure the integrity of the system. Regarding enforcement, illegal aliens must face the likelihood that they will be caught and will suffer consequences for breaking our laws. Increased involvement of state and local law enforcement, pursuing employer sanctions, holding lawbreakers – both employers and workers – accountable for their lawbreaking, and similar measures not only at the border but in the interior offer the only hope for ending the parallel illegal employment track. You can't allow some businesses to continue breaking the law and unfairly disadvantaging law-abiding competitors by having an illegal alien workforce. There needs to be greater certainty of getting caught and punished if there is to be any deterrence. Also, the US VISIT entry-exit system must be fully implemented, including the exit portion and deployment at land borders. Electronic verification of employment eligibility, document authenticity verification such as Intelli-Check technology is able to do with U.S. driver's licenses, and the entry of every alien's ID information into the Chimera data system established by the Enhanced Border Security and Visa Entry Reform Act of 2002 would go a long way toward ending the "wink-and-nod" system that has allowed the proliferation of smuggling, fake ID, and identity theft rings. These are prerequisites to any workable system for temporary foreign workers.

One advantage of a pure guestworker program over one that leads to amnesty is that under a pure program, the number of guestworkers can be periodically adjusted to take account of economic conditions in the U.S. When the economy is in recession and unemployment increases, the number of authorized guestworkers can be reduced. However, once an alien is granted permanent residence, the alien (and his or her family) is here forever, can work for anyone, and is eligible for unemployment insurance and welfare payments as would be any other permanent resident.

Three factors to consider in any nonamnesty guestworker program are:

- *Employers should pay the full cost of their guestworkers; the program should not in reality be subsidized by the American taxpayer.* The National Research Council has found that, because of their low wages and high demand for services, the average alien without a high school diploma will consume \$89,000 more in government services over his lifetime than he will pay in taxes. This fiscal deficit is largely borne by taxpayers at the state and local level. Most service industry guestworkers

will likely fit in this category. Ways to shield the taxpayer might include requiring that employers provide all guestworkers with health insurance (so that hospitals and taxpayers are not forced to pay for emergency health care for guestworkers); if guestworkers have children in the U.S., the employers pay the local school districts the full cost of educating the guestworkers' children.

- *Include mechanisms to protect low-skilled American workers.* This goal might be achieved by requiring employers first to seek American workers from a national registry before applying for guestworkers and that guestworkers be paid at least the prevailing wage for a particular occupation.
- *Minimize the possibility that the program will suffer the fate of European programs, that the guestworkers eventually will become permanent residents or remain illegally.* Guestworkers should spend no more than 180 days each year or 12 months out of each two years working in the U.S. in order to maintain and fulfill community responsibilities back home. Guestworkers' families must reside in their home countries unless employers pay their full costs while they are in the U.S. And any children born to guestworkers in the U.S. should not automatically become U.S. citizens.

Is Ag a Special Case?

Another concern about these proposals is that they establish government policy intervening in the marketplace so as to subsidize investment in labor rather than into innovation. As University of California, Davis economist Philip Martin told Investor's Business Daily ("Tide of Cheap Labor Often Gets in Way of Innovation," Dec. 20, 2002), "[O]ver time you don't get more food with more people out there, you get more food by substituting capital for labor." A good example of this would be the experience of California's tomato production. When the labor subsidy of the Bracero guestworker program ended in the early 1960s, dire predictions were heard that half the state's tomato production would disappear. But tomato growers mechanized, demonstrating that good-old American ingenuity isn't dead. Output rose and prices fell. By 1996, 5,500 laborers harvested 12 million tons of California tomatoes; in 1960, it took 45,000 laborers to pick 2.2 million tons of tomatoes. Similar stories could be told about sugar cane, tart cherries, prunes, and dried-on-the-vine innovation with raisin grapes.

While we generally view calls for guestworkers with much skepticism and are concerned that such programs fail to look out for American workers, we assent that "there continue to be a number of instances of local labor shortages for specific crops, confirmed by the U.S. Commission on Agricultural Workers," as NumbersUSA founder Roy Beck has written. Of all the industry sectors claiming worker shortages, certain agricultural sectors such as growers of perishable and easily bruised fruits and vegetables, who need a large number of workers for a brief harvest time, would appear to have the most valid claim. However, as the examples of capital investment and innovation demonstrate, the market will adjust to the actual size of the labor pool once the illegal alien population no longer distorts the picture, and innovation can be expected to deliver comparative advantage, as well as to raise the wages and working conditions of the remaining workers – even while output and profit grow and consumer prices at worst rise minimally (because labor costs are such a small proportion of the sticker price

of fruits and vegetables). Thus, to resist turning blindly to guestworker programs could produce a win-win result for all parties.

A key concern of NumbersUSA is for law-abiding farmers and farm workers. Agricultural employers have never used the H-2A program to its full allowable capacity. Some have complained that it can present bureaucratic delays and hurdles. We do not wish that the route to a legal workforce be unduly slow, inefficient, and bureaucratic. Such a situation could cause some agricultural employers to turn a blind eye to the legal status of their workers. However, any streamlining of the program risks removing prudent safeguards of citizen and immigrant workers.

Assessment of Selected Proposals

The Bush administration proposal, though inchoate, is a mass amnesty. We appreciate that the President has said that illegal aliens should not be rewarded with a path to citizenship, and that he has stated that such a path would reward illegal behavior and spur more illegal immigration. Unfortunately, ambiguities in the proposal and some contradictory further statements about the plan do not provide clear guarantees that the administration's plan will not become, in fact, a citizenship amnesty after all.

On the one hand, the President has suggested that illegal aliens come forward, register, and get a 3-year work permit for the job they now hold, and then apply for a 3-year renewal. And he has said that all these illegal aliens must ultimately go home.

On the other hand, the administration has also indicated that after 6 years, the illegal aliens may be allowed to get more work permits and perhaps be eligible to apply for a green card in some way. This sounds far too much like a Creeping Citizenship Amnesty.

Even if the administration tightened up the plan so that no illegal alien could stay more than 6 years and provided the new enforcement mechanisms to ensure they all go home at that time, this plan would still be a Basic Reward Amnesty. That is, it would reward the illegal aliens with the very thing they came to steal – an American job – and move them to the front of the line ahead of all the people waiting to enter the U.S. legally. And the lawbreaking employers would receive an amnesty so that they would face no consequence for their illegal activity.

The guestworker component of the administration proposal is perhaps even more problematic:

- It appears to open every American occupation to competition from the global labor force.
- It has no numerical limit.
- Although it requires an employer to post a job first for Americans to take, there are no provisions for ensuring that the job is not posted below prevailing wages, benefits, and working conditions to drive off American workers.
- It lacks strong enough incentives and enforcement mechanisms for guestworkers to return to the home country.

- It allows guestworkers to spend the entirety of their 3-year visa term here, have their family with them, have children here who are automatically U.S. citizens, and put down roots here, all making it unlikely that they will act like guests and eventually leave.

The incentives to stay far outweigh any incentives to leave. That includes the implied Social Security totalization agreement with Mexico, whereby even past illegal aliens would qualify for Social Security payments once back home.

The administration proposal also fails to establish enforcement and assurance of a legal workforce. A parallel illegal alien workforce could continue, as there are always some who are willing to break the law for a buck. And should a guestworker lose his American job, there is no means to ensure that he actually leaves the country. At best, the plan postpones the inevitable re-entry into the illegal population and at worst precipitates a new wave of illegal immigrants encouraged by this eighth amnesty to get here, stay below the radar, and eventually be amnestied.

Similar to the administration proposal, AGJOBS is a two-step amnesty. First, illegal aliens are eligible for temporary work visas if they have worked in agriculture for at least 100 work days or 575 hours during any 12-month period during the time from February 2002 to August 2003. The aliens must apply for such status during the period beginning 7 months after enactment of the bill and ending 25 months after enactment. Illegal aliens granted temporary work visas under step one will be eligible for permanent residence, along with spouses and minor children, if they work in agriculture for at least 360 work days or 2,060 hours during the period from September 2003 to August 2009, 75 work days or 430 hours during at least three nonoverlapping periods of 12 consecutive months during the period from September 2003 to August 2009, and 240 work days or 1,380 hours during the period from September 2003 to August 2006.

Allowing illegal aliens to become permanent residents, and then citizens, is the essence of an amnesty. AGJOBS contains no numerical limit on the number of illegal aliens who may receive amnesty. Because there are estimated to be 1 to 2 million seasonal agricultural workers hired each year, and proponents estimate that 85 percent or more are illegal aliens, the amnesty could total up to 1.7 million illegal alien workers, plus spouses and children. One may expect that many ineligible illegal aliens will fraudulently apply for, and successfully receive, amnesty under this bill. That was exactly what happened as part of the special agricultural worker amnesty program enacted as part of the Immigration Reform and Control Act of 1986. Up to two-thirds of illegal aliens receiving amnesty under that program had submitted fraudulent applications.

The Temporary Agricultural Labor Reform Act, the Goodlatte bill, does not grant amnesty to illegal aliens. H.R. 3604 modifies the existing H-2A program, rather than establish an open-ended new program. It targets the agriculture sector, and those parts of it that may need temporary workers. Insofar as the H-2A program is concerned, it has the benefit of getting farmers the temporary workers they need when they need them, and the workers actually return to the home country when the work is over. We commend the chairman for the spirit in which he offers this legislation and his intent to

help farmers while avoiding the dangers and pitfalls of large-scale guestworker plans and any kinds of amnesties.

We would offer several suggestions for improving H.R. 3604. First, *guestworkers should not be accompanied by family members*. As long as family members can come to the U.S., American taxpayers will be forced to subsidize farm laborers by paying for the worker's and his or her family members' education, health care, and other costs. Also, having family members here ensures that more automatic U.S. citizen "anchor babies" will be born here. Having a citizen child under current policies tends to result in permanent residence by becoming illegal aliens and staying because the federal government typically won't deport these families. Rather, having the worker's immediate family remain and maintain ties in the home country gives the worker added incentive to return instead of stay in the United States.

Second, *the period of admission of 10 months out of one year or 20 months out of 2 years should be reduced*. This is tantamount to U.S. residency with a 2-month vacation, thus undermining the notion that they are guestworkers. The guestworker, in order to ensure adequate maintenance of ties to the home country, should have to spend at least half of every year or one year out of every two in the home country. *Guestworkers should not be allowed to adjust their status to any immigrant or any other nonimmigrant status*, though this would not prevent them from returning home and applying for another status. Otherwise, the expectation too easily shifts from temporary worker to permanent resident.

More generally, *the bill must be preceded by an effective enforcement system* to restore the rule of law to immigration. Before any new guestworker legislation goes into force, measures such as the CLEAR Act (H.R. 2671) and the SAFER Act (H.R. 3522) should be fully implemented in order that the illegal immigration and illegal employment track no longer operate below the table in tandem with legal means to secure temporary foreign workers. Otherwise, H-2A will continue to be underused.

Also, *employers who use any nonimmigrant visa system should be required to use the electronic verification of employment eligibility system* that Congress recently made accessible to employers nationwide. Those employers who have voluntarily participated in the pilot program have been well satisfied with the program's efficiency and are now confident that they have a legal workforce. If the illegal employment track is to end, then employment verification must occur. We must be certain the persons presenting themselves are who they say they are and are lawfully eligible for employment in this country. Employers who use this technology know right away that they are operating above the law.

Thank you, and I am pleased to take your questions.

###